

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RICK FRIERI, on behalf of himself and
all others similarly situated, and on behalf
of the general public,

Plaintiff,

v.

SYSCO CORPORATION; SYSCO SAN
DIEGO, INC.; AND DOES 1-100,

Defendants.

Case No.: 3:16-cv-01432-JLS-NLS

**ORDER GRANTING JOINT
MOTION FOR PROTECTIVE
ORDER AS MODIFIED BY THE
COURT**

(Dkt. No. 21)

Before the Court is the parties' Joint Motion for a Protective Order. Having reviewed the Stipulation and Proposed Protective Order governing discovery in this matter, and good cause appearing, the motion is **GRANTED AS MODIFIED BY THE COURT.**

IT IS HEREBY ORDERED that the following protective order is entered, as modified by the Court (see paragraph 6):

1. In this Stipulation and Protective Order, the words set forth below shall have the following meanings:

a. "Proceeding" means the above-entitled proceeding, Case No. 16-cv-1432 JLS (NLS).

1 b. “Court” means the Honorable Janis L. Sammartino, or any other
2 judge to which this Proceeding may be assigned, including Court staff participating in
3 such proceedings.

4 c. “Confidential” means any information which is in the possession of a
5 Designating Party who believes in good faith that such information is entitled to
6 confidential treatment under applicable law.

7 d. “Confidential Materials” means any Documents, Testimony or
8 Information as defined below designated as “Confidential” or “Highly Confidential”
9 pursuant to the provisions of this Stipulation and Protective Order.

10 e. “Designating Party” means the Party that designates Materials as
11 “Confidential” or “Highly Confidential.”

12 f. “Disclose” or “Disclosed” or “Disclosure” means to reveal, divulge,
13 give, or make available Confidential Materials, or any part thereof, or any information
14 contained therein.

15 g. “Documents” means (i) any “Writing,” “Original,” and “Duplicate” as
16 those terms are defined by Federal Rules of Evidence, Rule 1001 (a) and Federal Rule of
17 Civil Procedure 34, which have been produced in discovery in this Proceeding by any
18 person, and (ii) any copies, reproductions, or summaries of all or any part of the
19 foregoing.

20 h. “Highly Confidential” means any information which is in the
21 possession of a Designating Party who believes in good faith that the Disclosure of such
22 information to another Party or non-Party would create a substantial risk of serious
23 financial or other injury that cannot be avoided by less restrictive means. There is a
24 legitimate basis in this Proceeding to use Highly Confidential designations because,
25 among other things, plaintiff Rick Frieri (“Plaintiff”) seeks information and documents
26 (a) that are related to personal contact information of individuals other than Plaintiff, and
27 the privacy rights of those individuals must be protected, and (b) that are proprietary and
28 trade secret information.

1 i. “Information” means the content of Documents or Testimony.

2 j. “Testimony” means all depositions, declarations or other testimony
3 taken or used in this Proceeding.

4 2. The Designating Party shall have the right to designate as “Confidential” any
5 Documents, Testimony or Information that the Designating Party in good faith believes
6 to contain non-public information that is entitled to confidential treatment under
7 applicable law. In addition, any Documents, Testimony or Information that the
8 Designating Person believes in good faith that the Disclosure to another Party or non-
9 Party may create a substantial risk of serious financial or other injury that cannot be
10 avoided by less restrictive means may be designated as “Highly Confidential.” Putative
11 class members’ contact information shall be considered designated as “Highly
12 Confidential” regardless of the manner in which it is Disclosed.

13 3. The entry of this Stipulation and Protective Order does not alter, waive,
14 modify, or abridge any right, privilege or protection otherwise available to any Party with
15 respect to the discovery of matters, including but not limited to any Party’s right to assert
16 the attorney-client privilege, the attorney work product doctrine, or other privileges, or
17 any Party’s right to contest any such assertion.

18 4. Any Documents, Testimony or Information to be designated as
19 “Confidential” or “Highly Confidential” must be clearly so designated before the
20 Document, Testimony or Information is Disclosed or produced. The Parties may agree
21 that the case name and number are to be part of the “Confidential” designation. The
22 “Confidential” and “Highly Confidential” designations should not obscure or interfere
23 with the legibility of the designated Information.

24 a. For Documents (apart from transcripts of depositions or other pretrial
25 or trial proceedings), the Designating Party must affix the legend “Confidential” or
26 “Highly Confidential” on each page of any Document containing such designated
27 Confidential Material.

28 b. For Testimony given in depositions, the Designating Party may either:

1 i. identify on the record, before the close of the deposition or
2 within 60 days following receipt of the deposition transcript, all “Confidential” or
3 “Highly Confidential” Testimony, by specifying all portions of the Testimony that
4 qualify as “Confidential” or “Highly Confidential;” or
5 ii. designate the entirety of the Testimony at the deposition as
6 “Confidential” or “Highly Confidential” (before the deposition is concluded) and the
7 designating party must identify specific portions of the Testimony as to which protection
8 is sought within 60 days following receipt of the deposition transcript. If the designating
9 party fails to identify specific portions of the Testimony as to which protection is sought
10 within 60 days, the Testimony will lose its “Confidential” designation except as provided
11 in Paragraph 5. In circumstances where portions of the deposition Testimony are
12 designated for protection, the transcript pages containing “Confidential” or “Highly
13 Confidential” Information may be separately bound by the court reporter, who must affix
14 to the top of each page the legend “Confidential” or “Highly Confidential,” as instructed
15 by the Designating Party.

16 c. For Information produced in some form other than Documents, and
17 for any other tangible items, including, without limitation, compact discs or DVDs, the
18 Designating Party must affix in a prominent place on the exterior of the container or
19 containers in which the Information or item is stored the legend “Confidential” or
20 “Highly Confidential.” If only portions of the Information or item warrant protection, the
21 Designating Party, to the extent practicable, shall identify the “Confidential” or “Highly
22 Confidential” portions.

23 5. The inadvertent production by any of the undersigned Parties or non- Parties
24 to the Proceedings of any Document, Testimony or Information during discovery in this
25 Proceeding without a “Confidential” or “Highly Confidential” designation, shall be
26 without prejudice to any claim that such item is “Confidential” or “Highly Confidential”
27 and such Party shall not be held to have waived any rights by such inadvertent
28 production. In the event that any Document, Testimony or Information that is subject to a

1 “Confidential” or “Highly Confidential” designation is inadvertently produced without
 2 such designation, the Party that inadvertently produced the document shall give written
 3 notice of such inadvertent production within twenty (20) days of discovery of the
 4 inadvertent production, together with a further copy of the subject Document, Testimony
 5 or Information designated as “Confidential” or “Highly Confidential” (the “Inadvertent
 6 Production Notice”). Upon receipt of such Inadvertent Production Notice, the Party that
 7 received the inadvertently produced Document, Testimony or Information shall promptly
 8 destroy the inadvertently produced Document, Testimony or Information and all copies
 9 thereof, or, at the expense of the producing Party, return such together with all copies of
 10 such Document, Testimony or Information to counsel for the producing Party and shall
 11 retain only the “Confidential” or “Highly Confidential” designated Document, Testimony
 12 of Information. Should the receiving Party choose to destroy such inadvertently produced
 13 Document, Testimony or Information, the receiving Party shall notify the producing
 14 Party in writing of such destruction within ten (10) days of receipt of written notice of the
 15 inadvertent production. This provision is not intended to apply to any inadvertent
 16 production of any Information protected by the attorney-client privilege or work product
 17 doctrine. In the event that this provision conflicts with any applicable law regarding
 18 waiver of confidentiality through the inadvertent production of Documents, Testimony or
 19 Information, such law shall govern.

20 6. In the event that counsel for a Party receiving Documents, Testimony or
 21 Information in discovery designated as “Confidential” or “Highly Confidential” objects
 22 to such designation with respect to any or all of such items, said counsel shall advise
 23 counsel for the Designating Party, in writing, of such objections, the specific Documents,
 24 Testimony or Information to which each objection pertains, and the specific reasons and
 25 support for such objections (the “Designation Objections”) **within 30 days of the**
 26 **challenging party’s receipt of the materials in issue.** ~~Counsel for the Designating Party~~
 27 ~~shall have thirty (30) days from receipt of the written Designation Objections.~~ Counsel
 28 for the Designating Party **may then** either (a) agree in writing to de-designate

Documents, Testimony or Information pursuant to any or all of the Designation Objections and/or (b) **initiate the process for the parties to** file a **joint** motion with the Court, **as outlined in the Chambers Rules**, seeking to uphold any or all designations on Documents, Testimony or Information addressed by the Designation Objections (the “Designation Motion”). **The Designation Motion must be filed no later than 45 days after the challenging party’s receipt of the designated materials in issue.** Pending a resolution of the Designation Motion by the Court, any and all existing designations on the Documents, Testimony or Information at issue in such Motion shall remain in place. The Designating Party shall have the burden on any Designation Motion of establishing the applicability of its “Confidential” or “Highly Confidential” designation. In the event that the Designation Objections are neither timely agreed to nor timely addressed in the Designation Motion, then such Documents, Testimony or Information shall be de-designated in accordance with the Designation Objection applicable to such material.

7. Access to and/or Disclosure of Confidential Materials designated as “Confidential” shall be permitted only to the following persons:

a. the named parties to this Action and their officers, directors and/or employees (former or current), and to putative class members;

b. the Court;

c. (1) Attorneys of record in the Proceeding and their affiliated attorneys, paralegals, clerical and secretarial staff employed by such attorneys who are actively involved in the Proceeding and are not employees of any Party. (2) In-house counsel to the undersigned Parties and the paralegal, clerical and secretarial staff employed by such counsel. Provided, however, that each non-lawyer given access to Confidential Materials shall be advised that such Confidential Materials are being Disclosed pursuant to, and are subject to, the terms of this Stipulation and Protective Order and that they may not be Disclosed other than pursuant to its terms;

d. those officers, directors, partners, members, employees and agents of all non-designating Parties that counsel for such Parties deems necessary to aid counsel in

1 the prosecution and defense of this Proceeding; provided, however, that prior to the
2 Disclosure of Confidential Materials to any such officer, director, partner, member,
3 employee or agent, counsel for the Party making the Disclosure shall deliver a copy of
4 this Stipulation and Protective Order to such person, shall explain that such person is
5 bound to follow the terms of such Order, and shall secure the signature of such person on
6 a statement in the form attached hereto as Exhibit A;

7 e. court reporters in this Proceeding (whether at depositions, hearings, or
8 any other proceeding);

9 f. any deposition, trial or hearing witness in the Proceeding who
10 previously has had access to the Confidential Materials, or who is currently or was
11 previously an officer, director, partner, member, employee or agent of an entity that has
12 had access to the Confidential Materials;

13 g. any deposition or non-trial hearing witness in the Proceeding who
14 previously did not have access to the Confidential Materials; provided, however, that
15 each such witness given access to Confidential Materials shall be advised that such
16 Confidential Materials are being Disclosed pursuant to, and are subject to, the terms of
17 this Stipulation and Protective Order and that they may not be Disclosed other than
18 pursuant to its terms;

19 h. mock jury participants, provided, however, that prior to the Disclosure
20 of Confidential Materials to any such mock jury participant, counsel for the Party making
21 the Disclosure shall deliver a copy of this Stipulation and Protective Order to such
22 person, shall explain that such person is bound to follow the terms of such Order, and
23 shall secure the signature of such person on a statement in the form attached hereto as
24 Exhibit A.

25 i. outside experts or expert consultants consulted by the undersigned
26 Parties or their counsel in connection with the Proceeding, whether or not retained to
27 testify at any oral hearing; provided, however, that prior to the Disclosure of Confidential
28 Materials to any such expert or expert consultant, counsel for the Party making the

1 Disclosure shall deliver a copy of this Stipulation and Protective Order to such person,
 2 shall explain its terms to such person, and shall secure the signature of such person on a
 3 statement in the form attached hereto as Exhibit A. It shall be the obligation of counsel,
 4 upon learning of any breach or threatened breach of this Stipulation and Protective Order
 5 by any such expert or expert consultant, to promptly notify counsel for the Designating
 6 Party of such breach or threatened breach; and

7 j. any other person that the Designating Party agrees to in writing.

8 8. Access to and/or Disclosure of Confidential Materials designated as “Highly
 9 Confidential” shall be permitted only to the following persons:

10 a. the Court;

11 b. (1) Attorneys of record in the Proceedings and their affiliated
 12 attorneys, paralegals, clerical and secretarial staff employed by such attorneys who are
 13 actively involved in the Proceedings and are not employees of any Party. (2) In-house
 14 counsel to the undersigned Parties and the paralegal, clerical and secretarial staff
 15 employed by such counsel. Provided, however, that each non-lawyer given access to
 16 Confidential Materials shall be advised that such Materials are being Disclosed pursuant
 17 to, and are subject to, the terms of this Stipulation and Protective Order and that they may
 18 not be Disclosed other than pursuant to its terms;

19 c. court reporters in this Proceeding (whether at depositions, hearings, or
 20 any other proceeding);

21 d. outside experts or expert consultants consulted by the undersigned
 22 Parties or their counsel in connection with the Proceeding, whether or not retained to
 23 testify at any oral hearing; provided, however, that prior to the Disclosure of Confidential
 24 Materials to any such expert or expert consultant, counsel for the Party making the
 25 Disclosure shall deliver a copy of this Stipulation and Protective Order to such person,
 26 shall explain its terms to such person, and shall secure the signature of such person on a
 27 statement in the form attached hereto as Exhibit A. It shall be the obligation of counsel,
 28 upon learning of any breach or threatened breach of this Stipulation and Protective Order

1 by any such expert or expert consultant, to promptly notify counsel for the Designating
2 Party of such breach or threatened breach; and

3 e. any person who authored, received, saw or was otherwise familiar
4 with the Designated Material that is marked "HIGHLY CONFIDENTIAL," including
5 any person otherwise familiar with the information contained therein, but only to the
6 extent of that person's familiarity with the information prior to its Disclosure by a
7 Designating Party.

8 9. Confidential Materials shall be used by the persons receiving them only for
9 the purposes of preparing for, conducting, participating in the conduct of, and/or
10 prosecuting and/or defending the Proceeding, and not for any business or other purpose
11 whatsoever.

12 10. Any Party to the Proceeding (or other person subject to the terms of this
13 Stipulation and Protective Order) may ask the Court, after appropriate notice to the other
14 Parties to the Proceeding, to modify or grant relief from any provision of this Stipulation
15 and Protective Order.

16 11. Entering into, agreeing to, and/or complying with the terms of this
17 Stipulation and Protective Order shall not:

18 a. operate as an admission by any person that any particular Document,
19 Testimony or Information marked "Confidential" or "Highly Confidential" contains or
20 reflects trade secrets, proprietary, confidential or competitively sensitive business,
21 commercial, financial or personal information; or

22 b. prejudice in any way the right of any Party (or any other person
23 subject to the terms of this Stipulation and Protective Order):

24 i. to seek a determination by the Court of whether any particular
25 Confidential Material should be subject to protection as "Confidential" or "Highly
26 Confidential" under the terms of this Stipulation and Protective Order; or
27
28

1 ii. to seek relief from the Court on appropriate notice to all other
2 Parties to the Proceeding from any provision(s) of this Stipulation and Protective Order,
3 either generally or as to any particular Document, Material or Information.

4 12. Any Party to the Proceeding who has not executed this Stipulation and
5 Protective Order as of the time it is presented to the Court for signature may thereafter
6 become a Party to this Stipulation and Protective Order by its counsel's signing and
7 dating a copy thereof and filing the same with the Court, and serving copies of such
8 signed and dated copy upon the other Parties to this Stipulation and Protective Order.

9 13. Any Information that may be produced by a non-Party witness in discovery
10 in the Proceeding pursuant to subpoena or otherwise may be designated by such non-
11 Party as "Confidential" or "Highly Confidential" under the terms of this Stipulation and
12 Protective Order, and any such designation by a non-Party shall have the same force and
13 effect, and create the same duties and obligations, as if made by one of the undersigned
14 Parties hereto. Any such designation shall also function as consent by such producing
15 Party to the authority of the Court in the Proceeding to resolve and conclusively
16 determine any motion or other application made by any person or Party with respect to
17 such designation, or any other matter otherwise arising under this Stipulation and
18 Protective Order.

19 14. If any person subject to this Stipulation and Protective Order who has
20 custody of any a subpoena or other process ("Subpoena") from any government or other
21 person or entity demanding production of Confidential Materials, the recipient of the
22 Subpoena shall promptly give notice of the same by electronic mail transmission,
23 followed by either express mail or overnight delivery to counsel of record for the
24 Designating Party, and shall furnish such counsel with a copy of the Subpoena. Upon
25 receipt of this notice, the Designating Party may, in its sole discretion and at its own cost,
26 move to quash or limit the Subpoena, otherwise oppose production of the Confidential
27 Materials, and/or seek to obtain confidential treatment of such Confidential Materials
28 from the subpoenaing person or entity to the fullest extent available under law. The

1 recipient of the Subpoena may not produce any Documents, Testimony or Information
2 pursuant to the Subpoena prior to the date specified for production on the Subpoena.

3 15. Nothing in this Stipulation and Protective Order shall be construed to
4 preclude either Party from asserting in good faith that certain Confidential Materials
5 require additional protection. The Parties shall meet and confer to agree upon the terms of
6 such additional protection.

7 16. If, after execution of this Stipulation and Protective Order, any Confidential
8 Materials submitted by a Designating Party under the terms of this Stipulation and
9 Protective Order is Disclosed by a non-Designating Party to any person other than in the
10 manner authorized by this Stipulation and Protective Order, the non-Designating Party
11 responsible for the Disclosure shall bring all pertinent facts relating to the Disclosure of
12 such Confidential Materials to the immediate attention of the Designating Party.

13 17. This Stipulation and Protective Order is entered into without prejudice to the
14 right of any Party to knowingly waive the applicability of this Stipulation and Protective
15 Order to any Confidential Materials designated by that Party. If the Designating Party
16 uses Confidential Materials in a non-Confidential manner, then the Designating Party
17 shall advise that the designation no longer applies.

18 18. Where any Confidential Materials, or Information derived from Confidential
19 Materials, is included in any motion or other proceeding governed by Civil Local Rule
20 79.2, the Party shall follow those rules. With respect to discovery motions or other
21 proceedings not governed by Civil Local Rule 79.2, the following shall apply: If
22 Confidential Materials or Information derived from Confidential Materials are submitted
23 to or otherwise disclosed to the Court in connection with discovery motions and
24 proceedings, the same shall be separately filed under seal with the clerk of the Court in an
25 envelope marked: "CONFIDENTIAL – FILED UNDER SEAL PURSUANT TO
26 PROTECTIVE ORDER AND WITHOUT ANY FURTHER SEALING ORDER
27 REQUIRED."
28

1 19. The Parties shall meet and confer regarding the procedures for use of
2 Confidential Materials at trial and shall move the Court for entry of an appropriate order.

3 20. Nothing in this Stipulation and Protective Order shall affect the admissibility
4 into evidence of Confidential Materials, or abridge the rights of any person to seek
5 judicial review or to pursue other appropriate judicial action with respect to any ruling
6 made by the Court concerning the issue of the status of Protected Material.

7 21. This Stipulation and Protective Order shall continue to be binding after the
8 conclusion of this Proceeding and all subsequent proceedings arising from this
9 Proceeding, except that a Party may seek the written permission of the Designating Party
10 or may move the Court for relief from the provisions of this Stipulation and Protective
11 Order. To the extent permitted by law, the Court shall retain jurisdiction to enforce,
12 modify, or reconsider this Stipulation and Protective Order, even after the Proceeding is
13 terminated.

14 22. Upon written request made within thirty (30) days after the settlement or
15 other termination of the Proceeding, the undersigned Parties shall have thirty (30) days to
16 either (a) promptly return to counsel for each Designating Party all Confidential Materials
17 and all copies thereof (except that counsel for each Party may maintain in its files, in
18 continuing compliance with the terms of this Stipulation and Protective Order, all work
19 product, and one copy of each pleading filed with the Court and one copy of each
20 deposition together with the exhibits marked at the deposition), (b) agree with counsel for
21 the Designating Party upon appropriate methods and certification of destruction or other
22 disposition of such Confidential Materials, or (c) as to any Documents, Testimony or
23 other Information not addressed by sub-paragraphs (a) and (b), file a motion seeking a
24 Court order regarding proper preservation of such Confidential Materials. To the extent
25 permitted by law the Court shall retain continuing jurisdiction to review and rule upon the
26 motion referred to in subparagraph (c) herein.

27 23. After this Stipulation and Protective Order has been signed by counsel for all
28 Parties, it shall be presented to the Court for entry. Counsel agree to be bound by the

1 terms set forth herein with regard to any Confidential Materials that have been produced
2 before the Court signs this Stipulation and Protective Order.


3 24. The Parties and all signatories to the Certification attached hereto as Exhibit
4 A agree to be bound by this Stipulation and Protective Order pending its approval and
5 entry by the Court. In the event that the Court modifies this Stipulation and Protective
6 Order, or in the event that the Court enters a different Protective Order, the Parties agree
7 to be bound by this Stipulation and Protective Order until such time as the Court may
8 enter such a different Order. It is the Parties' intent to be bound by the terms of this
9 Stipulation and Protective Order pending its entry so as to allow for immediate
10 production of Confidential Materials under the terms herein.

11 25. Finally, pursuant to Magistrate Judge Nita L. Stormes' Civil Case
12 Procedures, the Parties agree to the following two mandatory provisions:

13 a. **Filing Under Seal.** Nothing shall be filed under seal, and the Court
14 shall not be required to take any action, without separate prior order by the Judge before
15 whom the hearing or proceeding will take place, after application by the affected party
16 with appropriate notice to opposing counsel. The Parties shall follow and abide by
17 applicable law, including Civil Local Rule 79.2, ECF Administrative Policies and
18 Procedures, Section II.j, and the chambers' rules, with respect to filing documents under
19 seal.

20 b. **Modifications.** The Court may modify the protective order in the
21 interests of justice or for public policy reasons.

22
23 Dated: June 14, 2017

24 
25 Hon. Nita L. Stormes
26 United States Magistrate Judge
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